

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

4400 BROAD RIVER ROAD
COLUMBIA, SOUTH CAROLINA 29210

POLICY #: 8.12.9	DATE: 09/01/93	REVISION DATE:
TITLE: IMPLIED CONSENT - BAC DATAMASTER OPERATOR RECERTIFICATION		PAGE 1 OF 2

RESPONSIBLE AUTHORITY: SPECIAL AGENT IN CHARGE OF
FORENSIC SERVICES LABORATORY

RELATED STANDARDS/STATUTES/REFERENCES: S.C. Code of Laws, Section 56-5-2950
S.C. Code of Laws, Section 50-21-114
S.C. Code of Laws, Section 55-1-100
S.C. Code of Laws, Section 56-1-2130
S.C. Code of Laws, Regulation 73-1
S.C. Code of Laws, Regulation 73-2
S.C. Code of Laws, Regulation 73-3

GENERAL PURPOSE: To set forth policies for the administration of implied consent breath alcohol tests.

POLICY: The Division will establish procedures for properly conducting implied consent BAC DataMaster breath alcohol tests.

SPECIFIC PROCEDURES: To be eligible for recertification, a certified BAC DataMaster test operator must satisfactorily complete a minimum of ten tests during the two year period of his/her certification, with a minimum of two of these tests performed in the last six months of the two year period. To count toward recertification, the tests must have the operator's issued certificate number and name correct. These tests may be implied consent tests, non-implied consent tests, or a combination of the two types. Non-implied consent tests performed for recertification purposes should have the correct subject name, however SLED will typically accept any subject names that are not obscene. Incompletes, invalid samples, interference detected, aborted tests, and solution changes do not count toward recertification. For any test to count for recertification, the test must be conducted in a proper manner on a SLED certified BAC DataMaster with remote test storage and retrieval capability. SLED will ascertain the number of tests based on database records. In the event of accidental/unavoidable loss of test data, SLED may accept copies of evidence tickets in lieu of database records. These evidence ticket copies, if utilized, must be maintained a minimum of three years. No recertification, other than instructors, may occur without either database records or evidence tickets, or a combination of the two, showing that at least the minimum number of tests were administered.

Even if the minimum number of tests are performed, denial of recertification will occur if the operator fails to demonstrate continuing ability to perform tests to the satisfaction of SLED. The performance of falsified implied consent tests on SLED certified BAC DataMasters in the field is not allowed. A falsified implied consent test, detected by SLED, will not count toward recertification, and may result in recertification being denied. A falsified implied consent test is a non-implied consent test performed as an implied consent test. If SLED detects three or more falsified implied consent tests in the two year period of certification, recertification will be denied.

Failure to obtain recertification does not void the certification period and the certification is still valid through the expiration date. However, once recertification is issued, it will typically not be revoked if three or more falsified implied consent tests, from a previous two year period, are later detected. The operator recertification of BAC DataMaster instructors will be renewed if continuing ability to perform DataMaster tests still exists, regardless of the number of tests performed. It is the responsibility of the law enforcement agency employing the operators to be aware of the expiration dates of certificates and to request recertification in a timely manner. This request may be made as soon as the requirements are met, but it must be received by SLED no later than thirty-one days after the expiration date of certification. Since the new date of certification is the same as the old expiration date, no records of dates of receipt or issue are required. The recertification cards, if requirements are met, will be issued promptly after the request is received. Even though recertification may be requested after the expiration date, all required tests must be performed within the two year period of the certificate.

After receiving a recertification request, SLED will ascertain if the operator has qualified for recertification. If he/she has qualified, a recertification card, with his/her original certification number, will be issued. On all recertifications, the previous expiration date will become the beginning date of a new two year certification period. The certification period begins at 12:01 A.M. on the certification date and ends at 11:59 P.M. on the expiration date. A recertification may be issued after the expiration date as long as the tests are completed in the two year time period. In this case, the recertification is issued retroactively. An operator should not perform tests after his/her certification has expired due to the fact that his/her recertification may not be approved. The operator should wait until he/she receives his/her recertification card and/or verbal notification from SLED of recertification. However, if tests are performed by an operator after his/her original expiration date, these are valid tests if the recertification is later issued by SLED. An operator, who does not qualify for recertification based on the above criteria, will be required to complete a DataMaster operator training program approved by SLED and be certified again. This operator may or may not be issued the same certification number.